

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7472

Petition of Vermont Electric Power Company,)
Inc., and Vermont Transco LLC, for authority to)
condemn easement rights in property interests of)
Arnold D. and Lilly E. Marek, and KeyBank)
National Association, located in Stowe,)
Vermont, for the purpose of constructing the)
115 kV transmission line portion of the so-)
called Lamoille County Project)

Order entered: 8/12/2009

ORDER CLOSING DOCKET

I. REPORT

On September 8, 2008, Vermont Electric Power Company, Inc., and Vermont Transco LLC (collectively, "VELCO") filed a petition to condemn easement rights across land belonging to Arnold D. and Lilly E. Marek in Stowe, Vermont. A prehearing conference was held on November 20, 2008, and a scheduling order was issued on November 24, 2008, and revised on January 26, 2009. The parties have prefiled testimony and conducted discovery in this proceeding.

VELCO filed a voluntary dismissal of its petition on March 16, 2009. On July 13, 2009, VELCO made a filing in which it requested that the Public Service Board ("Board") treat its voluntary dismissal of its petition as a motion for dismissal pursuant to V.R.C.P. 41(a)(2), given that proceedings had already commenced in this docket. VELCO observed that the only prejudice arising from granting a motion to dismiss would be to VELCO. VELCO also noted that all issues that gave rise to the petition have been resolved and that the Mareks were served with the notice of dismissal and have not responded.

Voluntary dismissal of an action by the plaintiff is only available under V.R.C.P. 41 (a)(1) before an adverse party serves an answer or a motion for summary judgment (or by a

stipulation signed by all the parties). In considering the application of this rule to proceedings before the Board in other dockets, the Board has concluded that it is not clear that a voluntary dismissal under V.R.C.P. 41(a)(1) is available to a petitioner once proceedings have commenced and a prehearing conference has been held.¹

Accordingly, as VELCO requests, I will treat the notice of voluntary dismissal as a motion for dismissal pursuant to V.R.C.P. 41 (a)(2). It appears that the only prejudice arising from dismissal of this petition would be to the party seeking condemnation of the Mareks' property (namely, VELCO) and that party is now requesting the dismissal. Therefore, I conclude that the petition for condemnation may be dismissed and this docket closed.

This decision is not adverse to the interest of any party; it therefore need not be circulated to the parties pursuant to 3 V.S.A. § 811. This report is made to the Public Service Board pursuant to 30 V.S.A. § 8.

Dated at Montpelier, Vermont, this 28th day of July, 2009.

s/Lars Bang-Jensen
Lars Bang-Jensen
Hearing Officer

1. *See*, for example, Docket 7397 (Order of 11/13/2008); Docket 7419 (Order of 5/21/2009).

II. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Report of the Hearing Officer is accepted.
2. The motion to withdraw the petition to condemn is granted.
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 12th day of August, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 12, 2009

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)